SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 491

BOARD OF SUPERVISORS OF SUFFOLK COUNTY, NEW YORK, *et al.*,

Appellants,

v.

I. WILLIAM BIANCHI, JR., *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF OF RALPH G. CASO, FRANCIS T. PURCELL, SOL WACHTLER, JOSEPH W. MULDOON, AND GEORGE B. COSTIGAN, AS MEMBERS OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NASSAU, NEW YORK, AS *AMICI CURIAE*

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Statement

This brief is presented as *amici curiae*, by RALPH G. CASO, FRANCIS T. PURCELL, SOL WACHTLER, JOSEPH W. MULDOON and GEORGE B. COSTIGAN, as members of the Board of Supervisors of the County of Nassau, State of New York, in view of the vital questions involved in the instant case, which will have an extreme effect upon the future governmental structure of the County of Nassau.

The members of the Board of Supervisors filing this brief constitute representation on the board equalling 87 out of 115 votes cast, under the weighted voting system in

effect in Nassau County since 1938. The Supervisors herein also represent five of the six Supervisors on the Board. Thus the position asserted herein is on behalf of the majority interests of the Board of Supervisors of the County.

In pursuance of section 102 of the County Government Law of Nassau County "The governing body of the county shall be the board of supervisors which, except as otherwise provided in this act, shall have and exercise all of the powers and duties of the county * * *."

There has been filed in this Court a brief by the County Attorney of Nassau County denominated a "Brief of County of Nassau as Amicus Curiae", which presumes to state the position of Nassau County with regard to the question of the constitutionality of weighted voting, particularly as it pertains to Nassau County. The members of the Board of Supervisors herein must advise the Court that no authorization for the filing of any such brief has been obtained by the County Attorney from the Board of Supervisors, which, as indicated from the above statutory language is the governing body of the County of Nassau. The brief filed by the County Attorney asserts the views of the County Executive of the County, who is not a member of the Board of Supervisors. It is thus the position of the Supervisors herein that the stand assumed by the County Attorney with respect to the constitutionality of the weighted voting system of Nassau County does not represent the position of the County of Nassau as adopted by the governing body of the County.

In 1965 a plan for reapportionment of the Board of Supervisors which would have established fifteen districts of equal population was submitted to the voters and defeated, indicating, quite clearly, that the citizen electorate desired to retain its present weighted voting system.

Summary of Argument

The Supervisors of the County of Nassau herein adopt the following views with respect to the questions presented in the instant case before this Court:

(1) The "one man, one vote" principle, as pronounced in *Reynolds* v. *Sims*, and cases similarly decided, is applicable to county board of supervisors and other legislative bodies of governmental units below the level of the State Legislature.

(2) Weighted voting, including the modified plan for Suffolk County now before this Court, clearly meets the constitutional requirements of the "one man, one vote" principle.

POINT I

The "one man, one vote" principle, as pronounced in *Reynolds* v. *Sims*, and cases similarly decided, is applicable to County Boards of Supervisors and other legislative bodies of governmental units below the level of the State Legislature.

There seems little doubt in view of the judicial pronouncements since the landmark case of *Reynolds* v. *Sims*, 377 U. S. 533, that the right to full and effective participation in the legislative process extends beyond the level of state government and applies with equal force to local legislative bodies, such as county boards of supervisors. This principle, particularly with regard to such legislative bodies in the State of New York, has found judicial approval in several New York cases, notably *Seaman* v. *Fedourich*, 16 N. Y. 2d 94 and *Shilbury* v. *Board of Supervisors of Sullivan County*, 46 Misc. 2d 837 (Sup. Ct. 1965), aff'd 25 App. Div. 2d 688 (3d Dept. 1966).

The members of the Board of Supervisors of the County of Nassau, appearing herein, agree with the principles of law enunciated in the foregoing cases and adopt the position that all citizens are entitled to representation on legislative bodies, whether on the local level or otherwise, in order to insure effective and equal participation in the legislative process.

POINT II

Weighted voting, including the modified plan for Suffolk County now before this Court, clearly meets the constitutional requirements of the "one man, one vote" principle.

In relation to the question of weighted voting the members of the Board of Supervisors herein, as the governing body of the County of Nassau, assume the posture that weighted voting, including the modified plan now before this Court sufficiently complies with the constitutional requirements of equal representation under the "one man, one vote" principle.

Weighted voting has been in effect in the County of Nassau for approximately twenty-nine years and it is submitted that it has been an effective force on behalf of all the citizens of the County and has afforded them appropriate representation in the local legislative procedures. Under the provisions of the County Government Law of Nassau County each supervisor is accorded one vote for every 10,000 inhabitants. There are three towns and two cities in the County of Nassau, the largest town, the Town of Hempstead having two supervisors. Under the formula denominated by the statute the total vote of the board of supervisors is 125 votes. Under limiting provisions of the local statute, however, the largest town, the Town of Hempstead, may not cast more than one-half of the total vote of the board. Thus of the 125 votes the Town of Hempstead

may only cast 62 votes. Since 63 votes are required for the passage of a local law, ordinance or resolution, it is manifest that minority representation of the other towns and two cities is assured and an effective voice in the legislative process is accorded in this respect.

It is therefore submitted that the computer-assisted analysis of the Nassau County system, as quoted at page 15 of the brief of the County Attorney of Nassau County, presuming to indicate that the representation of the other towns and the two cities has no effect, is inaccurate and the conclusion is erroneous that the Nassau County system is unconstitutional because "half of the representatives have no power to affect legislative determinations."

May it be stated at this point that the members of the Board of Supervisors of the County of Nassau filing this brief agree in all respects with the brief for the Towns of Babylon, Brookhaven, Islip and Smithtown, filed herein, as *amici curiae*, in which the position is stated that weighted voting is constitutionally acceptable. The members of the Nassau Board believe that the excellent arguments posed in that brief demonstrate most vividly that weighted voting plans to give to each county legislator, as the representative of the citizens, effective legislative influence proportional to the population of the area he represents within the permissible limits of the Constitution.

It is submitted that the well considered opinion of the Court in *Town of Greenburgh* v. *Board of Supervisors of Westchester County*, Sup. Ct. Westchester Co.—Index No. 6859—1965, decided February 3, 1967, presents cogent and appropriate arguments sustaining the principle of weighted voting, including the modified plan of Westchester County now being considered in that county and certainly the plan of Suffolk County now before this Court. As was stated in that case by Mr. Justice Nolan, a former Presiding Justice of the Appellate Division, Second Department:

> "The prohibition of the equal protection clauses goes no further than the invidious discrimination

(cf. *Williamson* v. *Lee Optical Co.*, supra, 348 U. S. 483, 489), and a legislative apportionment plan which seeks to preserve a separate voice in legislative processes, to the small, as well as the large communities if it can be effected without such discrimination, neither violates that prohibition, nor is it because of that purpose, irrational or unreasonable. If such a purpose can be effected, only through the employment of weighted voting or multi-member districting a plan which employs either device, or both should not be declared unconstitutional under the equal protection clauses because of defects which may appear in hypothetical situations now shown to be relevant, or because of inherent defects, which do not produce, in the particular case under consideration a constitutionally impermissible result."

In like manner the Court in *Shilbury* v. *Board of Supervisors of Sullivan County*, 46 Misc. 2d 837, (Sup. Ct. 1965) aff'd 25 App. Div. 2d 688 (3d Dept. 1966) with regard to weighted voting appropriately stated:

"Weighted voting has been defined as 'the system under which current membership of a legislative body is continued but which gives numbers of votes to individual members depending upon the numerical relationships among the populations which they represent' (Address, Milton Alpert, Counsel, Office for Local Government, N.Y.S. Conference of Mayors, June 16, 1965). While not the ideal solution and though possessed of shortcomings, it does provide some of the advantages of local representation while insuring a measure of equality (Weinstein, County Reapportionment, 65 Colum. L. Rev. 21, 41-46; cf. N.Y. Times, May 1, 1965, p. 38) and, in practice, has been utilized in Nassau County for many years without serious difficulties (cf. L. 1936, ch. 879)."

It is submitted that nothing to date has been decided to the contrary in the case of *Graham* v. *Board of Supervisors of Erie County*, 18 N. Y. 2d 672 (1966). As was pointed out in the *Greenburgh* case *supra* by Mr. Justice

Nolan the cryptic decision of the Court of Appeals of the State of New York does not necessarily mean a determination has been reached that "weighted voting plans are *per se* unconstitutional, regardless of their effect under any given state of facts".

With particular emphasis on the system as it is utilized in the County of Nassau, a recent article by Jack B. Weinstein, former County Attorney of Nassau County, is significantly appropriate. See "The Effect of the Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government", 65 Colum. L. Rev. 21. At page 44 of that well considered article it is stated:

> "New York's Nassau County, however, has utilized the system of weighted voting without serious difficulties. One city and three towns have one member each on the Board of Supervisors; the Town of Hempstead has two members because of its much larger population. The weight of each member's vote depends on the size of his constituency. The one limiting factor is that no 'supervisor or supervisors of any town or city [shall] be entitled to cast more than fifty per centum of the total vote.'"

It is also stated at page 45 by Mr. Weinstein:

> "The fact that Nassau adopted a weighted voting system is attributable in part to the fact that it contains the smallest number of towns in the state. Having only three towns and two small cities, Nassau County found weighted voting easily adaptable to its needs."

Concerning the question of constitutionality of the weighted voting systems, it is further stated by Mr. Weinstein at page 41:

> "Weighted voting does provide some of the advantages of local representation while insuring a measure of equality. It seems likely that weighted voting will be held to comply with federal constitutional requirements when it is (1) adopted in good

faith, (2) to meet special situations, and (3) the discrepancies in voting power are not extreme. Such special situations are presented by small municipal legislative bodies, and when insufficient time to reapportion properly a larger body makes a stopgap necessary.''

It would appear that the special situation alluded to by Mr. Weinstein with regard to small municipal legislative bodies is particularly appropriate with regard to Nassau County in view of the make-up of the Board of Supervisors consisting of six members.

It may also be pointed out that Nassau County's system is particularly appropriate with regard to committee representation on the Board of Supervisors, and, in the opinion of the Supervisors herein, complies most emphatically with the constitutional mandate with regard to ''one man, one vote''. Each Supervisor on the Nassau County Board is appointed a chairman of a particular committee. When a matter is referred to a committee, the chairman himself prepares a report and reports to the Board as a committee of the whole. Therefore, any vote that may be required with regard to committee action under the weighted voting system in effect in Nassau County bears the same representational feature as a full vote of the Board in plenary session.

It is respectfully submitted that weighted voting, including the modified plan as adopted by Suffolk County and which is now before this Court, meets all of the constitutional requirements of the ''one man, one vote'' principle under *Reynolds* and should be declared constitutional by this Court.

CONCLUSION

The principle of "one man, one vote" should be held to apply to legislative bodies below the state level. Weighted voting, as utilized in Nassau County, New York, and in the plan now before this Court, should be approved as an acceptable plan meeting the constitutional requirement of the "one man, one vote" rule.

Respectfully submitted,

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March 31, 1967